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HAROLD P. GEWERTER, ESQ. LTD.

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

GERALD HESTER, on behalf of himself and
all others similarly situated,

Plaintiff,

vs.

VISION AIRLINES, INC.,

Defendant.

CASE NO.: 2:09-CV-00117-RLH-RJJ

VISION AIRLINES, INC.'S
OBJECTION TO
NOTICE OF DEPOSITION

Deposition Date: Sept. 29, 2010
Deposition Time: 10:00 a.m.

VISION AIRLINES, INC., by and through its undersigned counsel, HAROLD P. GEWERTER, ESQ., hereby submits its Objection to Notice of Deposition sought by Plaintiff GERALD HESTER, pursuant to the Notice of Deposition served upon Harold P. Gewerter, Esq. as counsel for Defendant VISION AIRLINES, INC. seeking the deposition of Representative Regarding Discovery and Document Production pursuant to Federal Rules of Civil Procedure 30 and 45.

FRCP 30 (a) reads:

Rule 30. Depositions by Oral Examination

(a) When a Deposition May be Taken.

(1).....The deponent's attendance may be compelled by subpoena under Rule 45.

FRCP 45 reads:

Rule 45. Subpoena

1 (a) In General.

2 ...

3 (c) Protecting a Person Subject to a Subpoena.

4 (1) Avoiding Undue Burden or Expense; Sanctions.

5 A party or attorney responsible for issuing and serving a
6 subpoena must take reasonable steps to avoid imposing
7 undue burden or expense on a person subject to the
8 subpoena. The issuing court must enforce this duty and
9 impose an appropriate sanction — which may include lost
earnings and reasonable attorney's fees — on a party or
attorney who fails to comply.

10 (2) Command to Produce Materials or Permit Inspection.

11 (A) *Appearance Not Required.* A person commanded
12 to produce documents, electronically stored
13 information, or tangible things, or to permit the
14 inspection of premises, need not appear in person
15 at the place of production or inspection unless also
commanded to appear for a deposition, hearing, or
trial.

16 (B) *Objections.* A person commanded to produce documents
17 or tangible things or to permit inspection may serve on the
18 party or attorney designated in the subpoena a written
19 objection to inspecting, copying, testing or sampling any
20 or all of the materials or to inspecting the premises — or
21 to producing electronically stored information in the form
or forms requested. The objection must be served before
the earlier of the time specified for compliance or 14 days
after the subpoena is served. If an objection is made, the
following rules apply:

22 (i) At any time, on notice to the commanded person, the
23 serving party may move the issuing court for an order
24 compelling production or inspection.

25 (ii) **These acts may be required only as directed in the**
26 **order, and the order must protect a person who is**
27 **neither a party nor a party's officer from significant**
28 **expense resulting from compliance.**

(3) Quashing or Modifying a Subpoena.

1 (A) When Required. On timely motion, the issuing court must
2 quash or modify a subpoena that:

- 3 (i) fails to allow a reasonable time to comply;
4 (ii) requires a person who is neither a party nor a
5 party's officer to travel more than 100 miles from
6 where that person resides, is employed, or
7 regularly transacts business in person — except
8 that, subject to Rule 45(c)(3)(B)(iii), the person
9 may be commanded to attend a trial by traveling
10 from any such place within the state where the
11 trial is held;
12 (iii) requires disclosure of privileged or other protected
13 matter, if no exception or waiver applies; or
14 (iv) subjects a person to undue burden.

15 (B) When Permitted. To protect a person subject to or
16 affected by a subpoena, the issuing court may, on motion,
17 quash or modify the subpoena if it requires:

- 18 (i) disclosing a trade secret or other confidential
19 research, development, or commercial
20 information;
21 (ii) disclosing an unretained expert's opinion or
22 information that does not describe specific
23 occurrences in dispute and results from the
24 expert's study that was not requested by a party; or
25 (iii) a person who is neither a party nor a party's officer
26 to incur substantial expense to travel more than
27 100 miles to attend trial.

28 (C) Specifying Conditions as an Alternative. In the
circumstances described in Rule 45(c)(3)(B), the court
may, instead of quashing or modifying a subpoena, order
appearance or production under specified conditions if the
serving party:

- (i) shows a substantial need for the testimony or
material that cannot be otherwise met without
undue hardship; and
(ii) ensures that the subpoenaed person will be
reasonably compensated.

Discovery closed in this case on June 29, 2010 a full three months prior to the date of
the requested deposition. The first Notice of this requested deposition was given to Defendant

1 Vision on September 10, 2010. Thus the deposition should be quashed as it is well beyond
2 the discovery period in this matter.

3 In January 2010 Plaintiff filed a Motion to Compel in this matter in which they
4 requested relief as follows: "Accordingly, Plaintiff respectfully requests that the Court enter an
5 Order compelling Vision to provide all documents that Vision previously agreed to produce in
6 response to Plaintiff's Narrowed Requests, by a date certain." No request for an extension of
7 the discovery period was requested.

8 This Honorable Court on September 17, 2010 ruled as follows on the above Motion to
9 Compel: "ORDER granting [93] Motion to Compel. Items must be produced by 9/17/10.
10 Signed by Magistrate Judge Robert J. Johnston."

11 Thus since no extension of the discovery period has been requested or granted, the
12 noticed deposition should be quashed as it is well beyond the discovery period in this matter.

13 DATED this 20th day of September, 2010.

14 HAROLD P. GEWERTER, ESQ., LTD.

15
16 /s/ Harold P. Gewerter, Esq.
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24 Attorney for Defendant

25 **CERTIFICATE OF SERVICE**

26 Certification is hereby made that a true and correct copy of the foregoing VISION
27 AIRLINES, INC.'S OBJECTION TO NOTICE OF DEPOSITION was served this 20th day of
28 September, 2010, via the Court's CM/ECF system.

/s/ Harold P. Gewerter, Esq.
An Agent of HAROLD P. GEWERTER, ESQ., LTD.